IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No 11 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VAHORA ISMAILBHAI GAFURBHAI

Versus

VAHORA MAHMMADBHAI GAFURBHAI

Appearance:

MRS YOGINI V PARIKH for Petitioner

MR IQBAL SYED for Respondent No. 1

CORAM : MR.JUSTICE D.P.BUCH

Date of decision: 16/03/2001

CAV JUDGEMENT

1. The appellant above named has preferred this Second Appeal under Section 100 of the Code of Civil Procedure, 1908 (for short "Code"), challenging the

judgement and decree dated 30th November, 2000 recorded by the learned Joint District Judge, Nadiad in Regular Civil Appeal No. 155/99, under which, the learned Judge dismissed the appeal and confirmed the judgement and decree dated 13th September, 1999 recorded by the learned Civil Judge, (JD) Petlad in Civil Suit No. 193/1993 under which, the learned Trial Judge directed that the present appellant should hand over vacant possession of the disputed property to the respondent herein within 90 days.

2. The respondent above named preferred the aforesaid Civil Suit before the learned Civil Judge at Petlad stating that he was the owner of the property situated in Vora Vad area at village Sojitra. He contended that he had allowed the appellant to use the said property as a licensee without any agreement for payment of rent. He also contended that on completion of the period for which the property was given for residence had expired and notice was also issued to and served upon the appellant and yet the appellant did not vacate the said property and therefore, the suit was filed by the respondent against the appellant for vacant possession of the said property, claiming it to be a title suit.

3. Appellant resisted the suit by filing written statement at ex. 13 with a main contention that the property in question was let to him by the respondent herein at annual rent of Rs. 100/-.

4. The trial Court framed the necessary issues and held that the respondent was the owner of the said property and that the property had been given to the appellant under a licence. Ultimately, the trial Court also found that the appellant had failed to prove that he was a tenant in respect of the said property, consequently, on the aforesaid set of findings, the trial Court decreed the suit of the respondent directing the appellant to hand over the vacant possession of the said property to the respondent.

5. Feeling aggrieved by the said judgement and decree of the trial Court, the appellant unsuccessfully preferred Regular Civil Appeal No. 155/99 before the District Court at Nadiad. The learned Joint District Judge, who heard the appeal has confirmed the findings of the trial Court and dismissed the appeal of the appellant.

6. Feeling aggrieved by the said judgement and decree of the learned Joint District Judge, the appellant

preferred this appeal before this Court under Section 100 of the Code of Civil Procedure.

7. It has been mainly contended here that the two courts below have committed serious illegality in holding that the appellant was not a tenant of the said property. It is also contended that the two courts below have committed illegality in ignoring the facts on record and therefore, the judgement and decree of the two courts below are illegal, erroneous and deserve to be set aside. The appellant has therefore, prayed that the present appeal be allowed and the judgement and decree of the two courts below be ordered to be set aside and that the suit of the respondent be dismissed with costs, all through out.

8. I have heard Ms. Yogini Parikh, learned advocate appearing for the appellant, who has argued the appeal at a great length. She has taken me through the judgements of the two courts below. However, it was not possible for me to agree with the submissions made by the learned advocate for the appellant in support of the present appeal and therefore, the appeal deserves to be dismissed at admission stage.

9. It is an admitted position that the appellant and the respondents are real brothers. It is not in dispute that the respondent is the owner of the property in question. According to the case of the respondent, he had given the said property to the appellant as a licensee, the appellant claims to be a tenant in respect of the said property.

10. The trial Court as well as the lower appellate Court, both have recorded the concurrent findings of fact that the appellant has failed to prove that he was the tenant of the property in question.

11. The learned advocate for the appellant has vehemently submitted that the respondent had given incorrect facts to the trial Court. It is clear that the respondent had contended before the trial Court that the property in question was given on licence to the appellant in 1993 and the evidence produced shows that even in the year 1986 and 1988, the appellant was in possession of the said property.

12. Now, simply because there is some wrong statement made in the plaint by the respondent with respect to the actual period since which the appellant was put in possession in respect of the property in question, it

would not change the nature of contract between the parties in respect of the property in question.

13. It has also been contended by her that the two courts below have considered the fact that no rent receipt was produced by the appellant in support of his plea that he was a tenant in respect of the property in question. She has argued that the parties are brothers and therefore, rent receipt may not have been issued by the respondent to the appellant. Now, the suit has not been decreed on the sole consideration that no rent receipt was produced. Non submission of rent receipt was one of the considerations, which weighed with the two courts below in holding that the appellant had failed to prove that he was a tenant in respect of the property in question.

14. It has to be seen that apart from the non production of rent receipts, there was no other material produced by the appellant which could convince the two courts below on the point that the appellant was a tenant in respect of the property in question.

15. It has been contended that the evidence on record has supported the case of the appellant. Now, the evidence of the parties has been appreciated by the two courts below and it is not shown as to how the two courts below have committed illegality in appreciation of the evidence on record.

16. It has further been argued by Ms. Parikh, learned advocate for the appellant that the appellant had produced on record certain bills showing consumption of electricity supply. She has also argued that the bills stand in the name of the appellant. Now, the electric bill would stand in the name of the person, who is the consumer of the Gujarat Electricity Board. If, the appellant had applied for electric connection, then he may have been shown as consumer and therefore, the bills would naturally stand in his name. No further material has been produced to show that the appellant had applied for electric connection stating that he was a tenant at relevant point of time. There is nothing on the record to show that the board had heard the respondent in order to ascertain the said position put forward by the appellant. Therefore, it cannot be said that the respondent knew very well long back that the appellant had staged the defence of his tenancy right in above property in question, long back when the electric connection was applied for. This would be at the best an admission of the appellant with respect to his tenancy

right, which has to be treated as his admission in his own favour, which would not bind the respondent; since the respondent was not party to the said admission made by the appellant in his own favour. Therefore, simply because the electric bills stand in the name of the appellant, it does not go to prove that the appellant is a tenant in respect of the property in question.

17. It has further contended that the tax receipts have also been produced by the appellant. Now, when the appellant admittedly resides in this property, there would be nothing wrong if he was required to pay the municipal tax to the Municipal Authority for the period of his stay in the property in question. Simply, because, he paid taxes being the municipal tax to the municipality concerned, it would not mean that he was treated as tenant by the respondent. It seems that the appellant has not produced from the municipal record, the property register in order to show that as to whether his name was mentioned in the municipal record as tenant or not. This material evidence has not been produced on record by the appellant. The Municipal tax receipts would therefore not lead us to hold that the appellant is a tenant of the property in question.

18. It is further contended by Ms. Parikh, learned advocate for appellant that Sojitra Gram Panchayat has issued certificate at Ex. 104 showing that the appellant was staying in the said property since last 10 years. Now, if we consider this fact that the appellant was staying in the said property since about 10 years from the date of issue of the certificate by the Gram Panchayat, it simply shows that possession of the property in question is with the appellant but it does not go to prove or show that he was a tenant in respect of the said property. The fact that the appellant was staying in the property in question is not in dispute but the question is that the appellant was further required to prove that he was a tenant in respect of the said property.

19. Considering the matter as a whole, considering the evidence on record and considering the arguments advanced on length by Ms. Parikh for the appellant, it is clear that the findings of two courts below cannot be treated to be against a weight of evidence on record. In other words, it cannot be said that the two courts below have committed any illegality in appreciation of evidence and in holding that the respondent was the owner of the property in question and that the appellant was simply a licensee. The trial court as well as lower appellant

court have not been committed any error in awarding decree for possession in favour of the respondent and against the appellant. There are concurrent findings of fact recorded on appreciation on evidence, on factual aspects of the case. Both the parties were at liberty to adduce evidence before the Civil Court, reasonable opportunity was afforded to them for proceeding evidence and on appreciation thereof, the two courts below have recorded concurrent findings of fact as aforesaid.

20. I am of the opinion that the two courts below have not committed any illegality in coming to the aforesaid findings of fact on appreciation of evidence and therefore, there is no merit in the present appeal, consequently, the appeal deserves to be dismissed at this admission stage.

21. In the aforesaid facts and circumstances of the case, this appeal is ordered to be dismissed at admission stage. There shall be no order as to costs. However, the appellant is granted three months time for vacating the property in question and therefore, decree for possession against the appellant shall not be executable upto 30th June, 2001.

(D.P. Buch, J.)

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